clients employed an attorney to represent them in matters connected with the investigation of election frauds, and in addition to act as counsel for three men who had been indicted for such frauds. Later before the grand jury, the attorney refused to disclose the identity of the clients who employed him to represent the three indicted men, asserting his privilege. He was sentenced for contempt of court and now applies for a writ of *habeas corpus* for his discharge. *Held*, that the petitioner be discharged. *Ex parte McDonough*, 149 Pac. 566 (Cal.).

That the privilege of an attorney not to disclose communications of his client extends only to communications made in confidence as a part of the purpose of the client to obtain legal advice, is well established. *Hatton* v. *Robinson*, 14 Pick. (Mass.) 416. See *Hager* v. *Shindler*, 29 Cal. 47, 64. Still, the mere fact of the relationship should be considered a communication. See 4 WIGMORE, EVIDENCE, § 2313. Hence, if the client's name is given in confidence, it is within the application of the rule. However, if the attorney purports to represent one of the parties at bar, since each party to a suit has a right to know with whom he is dealing, the public policy in favor of preserving the sacredness of communications between client and attorney is overborne. Hence the attorney must, upon examination, disclose the name of his client. *Levy* v. *Pope*, Moody & Mal. 410. *Cf. White* v. *State*, 86 Ala. 69, 5 So. 674. See 4 WIGMORE, EVIDENCE, § 2313. But where it is undisputed that the attorney neither represents a party, nor has previously represented a party concerning the case at bar, there seems little reason why it should be made an exception to the established rule of privilege. *Foote* v. *Hayne*, 1 C. & P. 545, 546; *In re Shawmut Mining Co.*, 94 N. Y. App. Div. 156, 87 N. Y. Supp. 1059. See *In re Malcolm*, 129 N. Y. App. Div. 226, 113 N. Y. Supp. 666, 668. But the weight of authority is *contra*. *Satterlee* v. *Bliss*, 36 Cal. 489; *Mobile & Montgomery Ry. Co.* v. *Yeates*, 67 Ala. 164; *United States* v. *Lee*, 107 Fed. 702.

BOOK REVIEWS

PROPERTY AND CONTRACT IN THEIR RELATIONS TO THE DISTRIBUTION OF WEALTH. Volumes I and II. By Richard T. Ely. New York: The Macmillan Company. 1914. pp. xlvii, 474; vii, 521.

Dr. Ely's work contains an enormous amount of material, the result of many years of study and reflection; it is the production of mature moderation, with a confident hope in the possibilities of collective social purpose. Property is to be regarded as derivative in the modern social state; it has no inherent indefeasible claims and is not antecedent to the society which produced and protects it. Its enjoyment is therefore subject throughout to such control as may be necessary for the accomplishment of social purposes. It may be taken or limited or used as the community finds necessity, subject only to so much tenderness as is possible. How much is in fact possible, what uses demand compensation, cannot be stated in advance. We have certain regulative principles, nothing more; we must not forget that men will build only when they know the foundation is secure. Every sudden revolutionary invasion of the individual's customary expectations shakes a little the whole of society, puts some doubt of the future into the hearts of the living. Custom, therefore, creates a genuine obligation on society to respect what it has created.

As to right of contract, the same applies, though we need not be so fearful of vested rights. Liberty has no significance except in society; it is the right to do what society finds best for itself and for the actor to let him do. Society may indeed go so far as to forbid one from contracting while under economic

pressure, though it has done nothing to relieve the pressure itself. If one must take unhealthy work or starve, society may forbid the contract, while it leaves no alternative but starvation. This may be necessary as a condition of preventing such pressure from arising; it will remove the possibility of successfully exploiting the victims. Indeed the law has always recognized limits of the power to contract; the question is of the application of the principle. In practice we may safely be radical; more radical than in respect of property, in which we have vested rights to protect.

Throughout the book there are interesting suggestions in detail, always moderate, never pungent, seldom novel. One reads with assent and without surprise; one is seldom irritated or stimulated to the "intolerable labor of thought," but one is conscious of company with a writer of capacious mind, sound intelligence and the utmost good faith. The book is most useful for reference and might be the means of conversion to conscientious Bourbons, but it can hardly be said to contribute fundamentally to the difficulties which are now in the front of discussion. Perhaps no such book can do so; discussion is concerned in more partisan spirit with more specific problems. A book like Taussig's Economics, being a general compendium and designed as a restatement of the science as it stands, may afford to be removed from contention; but this is scarcely such a work. It would gain in interest and effect by a more decided and positive method.

Of chief interest to lawyers is that part which concerns the relation of the constitutions to property and contract. In these the author sides, definitely enough, with the liberal construction of the Bill of Rights. However, the vague clauses which have formed the basis for so much dispute are in his opinion amply flexible for all necessary adaptations. Social purposes more directly regulative of the individual than any we have known find no hindrance in these, if properly understood. It is true that hitherto we have had disappointments, especially in the state courts, but the Supreme Court has been wise and moderate, saving the Bakers' Case, and we have good reason to hope that the judges will in the future adopt a more understanding posture toward legislative experiments. They may be safely trusted in their interpretation of the Constitution to allow for the realization of all reasonable collective purposes. Indeed it may be asked whether they might not safely be given in form a power they possess in fact and become recognized as a kind of legislative chamber whose concurrence is necessary for radical legislation.

The last suggestion, if it be meant seriously, is much too naïve for such a work; it scarcely requires comment. The whole treatment of the relation of the Bill of Rights to the regulation of contract is inadequate. Experience does not justify any optimism in this respect either as to the Supreme Court or elsewhere; conservative changes in public opinion are readily reflected by the courts and radical changes get tardy response. If the Bill of Rights is to continue to give to courts the power to impose upon legislation their own views of public policy, it can only be at the expense of their present exemption from genuine responsiveness to public opinion. If, on the other hand, the Bill of Rights does not do this, it accomplishes practically nothing, because if it means no more than that no legislation shall be valid which does not represent a reasonably disputable position in policy, such legislation seldom arises. It is of course true that an uncompromising but powerful minority may force its will upon the legislature, but in most cases they must press their claims, at least avowedly, as part of a plan of general utility, and support themselves with a show of reason, before they can succeed. It is extremely doubtful whether the rare cases, in which they cannot appeal to a reasonable theory, justify the dangers of irritation and political strain which experience shows to result from the function as it exists. A mild optimism as to the future conversion of judges to the writer's own views seems hardly a sufficient faith for practical purposes. The

issues generally concern class conflicts in which men cannot be depended upon to be sympathetic with other class purposes; not even judges, though their record is much more creditable than many suppose. If the fight in the legislature, where all are represented, is to be transferred at its conclusion to a tribunal which is drawn from one class only, and properly so drawn, the strain upon government becomes greater than one ought lightly to accept. In any case we are entitled to more of what Dr. Ely likes to call a "realistic" treatment of so momentous a problem. LEARNED HAND.

THE HAGUE ARBITRATION CASES. By George Grafton Wilson. Boston: Ginn and Company. 1915. pp. x, 525.

This is a collection of the preliminary and final documents in the cases submitted to the Hague tribunal. The preliminary documents are the agreements — technically termed *compromis* — under which the cases have been submitted, and the final documents are the formal awards. Heretofore these papers have been difficult to find. This volume collects them, and presents an English translation of such as have no authoritative English text. No commentary is given; and it is obvious that the editor's purpose has been simply to furnish a text for the use of students and other investigators, — a fruitful basis for historical and legal dissertations. The editor has added maps, the arbitration conventions of the two Hague conferences, and an index. The result is a useful book, and indeed an indispensable one.

A short preface says that "the fifteen cases upon which the court has acted show that the resort to arbitration as a means of settlement of international disputes has become common in the early days of the twentieth century," that "financial claims have been passed upon frequently, but such questions as the right to fly the flag, the violation of territory, the delimitation of boundaries, and other questions involving the fundamental rights of states have likewise been considered," that "in about one-half the cases no nationals of the parties to the controversy have sat as arbitrators," that "nearly one-half the cases have been before three judges, and all but one of the remaining cases before five judges," that "of the six arbitrators sitting in the cases decided in 1913 and 1914, each arbitrator had previously sat upon at least one case," that "France has been a party in six cases, Great Britain in five, the United States in four, Germany and Italy in three each, and several states in two or only in one," and that "seventeen states in all have been parties." These extracts from the preface indicate, as the editor says, "an established confidence in the tribunal."

Reasons for the growth of confidence in the Hague system of settling disputes can be found in the awards. As the system does not exclude nationals from a tribunal, and as arbitral tribunals, even when not partly composed of nationals, have often made awards that were obviously the result of compromise, the Hague system has not always been looked upon with the highest hope. Yet the actual awards have not justified the fears so naturally felt. The awards cannot fairly be called compromises. Further, the lack of permanence in the court — a defect suggesting that an evanescent body of judges might have the same irresponsibility as jurors — has been somewhat overcome by the growing practice of selecting arbitrators who have already served. Thus there may arise in time an approximately permanent court and a systematic body of judicial decisions.

In order that the Hague awards may become authoritative precedents after the fashion of decisions rendered where the Anglo-American system of law prevails, or even in order that they may have the merely persuasive force